STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

KENT COUNTY, SC **SUPERIOR COURT**

DR. GARY BLOCK and	:	
DR. JUSTINE JOHNSON	:	
	:	
Plaintiffs,	:	
	:	
v.	:	**C.A. No. KC 99-0970**
	:	
VETCOR OF WARWICK, LLC	:	
	:	
Defendant.	:	

D E C I S I O N

WILLIAMS, J. This action is brought before the Court on plaintiffs' motion for declaratory relief against their former employer, the defendant, VetCor, LLC ("VetCor"). The plaintiffs, Dr. Block and Dr. Johnson, seek a declaration that the covenants not to compete in their employment contracts with VetCor are invalid, or in the alternative, that such covenants should be reduced in time and scope to reasonable terms of limitation based upon the circumstances of this controversy. In response to plaintiffs' assertions, defendant VetCor counterclaims and seeks enforcement of the restrictive covenants entered between the parties. This Court has jurisdiction over this matter pursuant to G.L. 1956 § 9-30-1 et seq.

Facts/Procedural History

The following facts unless otherwise noted, are undisputed. Dr. Johnson and Dr. Block commenced their employment as licensed veterinarians at the Warwick Animal Hospital in the Fall of

1997. Drs. Johnson and Block, who are married to one another, subsequently bought a home in Warwick, Rhode Island in December, 1997.

By way of background, Dr. Johnson is the only Board Certified critical care specialist in Rhode Island, and Dr. Block is one of only two Board Certified internal medicine specialists in Rhode Island. The plaintiffs claim that this advanced training in internal medicine and critical care are unique skills to Rhode Island, and further, that the nearest Board Certified critical care specialists are located in Boston Massachusetts, North Grafton Massachusetts, and West Bridgewater, Massachusetts. Additionally, the plaintiffs claim that Warwick Animal Hospital is the only veterinary hospital in Rhode Island that purports to have twenty-four (24) hour, seven (7) day a week treatment available to animals.

On April 1, 1998, the former owner of Warwick Animal Hospital sold his medical practice to VetCor for 2.7 million dollars. Although said sale did not include any real estate, it did include the business, inventory, equipment, and goodwill of the Warwick Animal Hospital. The plaintiffs continued to be employed at the animal hospital during this transition; Dr. Block was named as Chief of Staff while Dr. Johnson worked as a Board Certified Critical Care Specialist**.** Although the parties dispute the range of services offered by VetCor during the ownership transition, this Court adduces from the parties' memoranda, that at the time of the sale, Warwick Animal Hospital consisted of an established "general practice," an established "emergency practice," and a developing "referral practice" that was anticipated by both parties to increase due to the medical specialties of the plaintiffs.

As the ownership of Warwick Animal Hospital passed to VetCor, all of its employed veterinarians were expected to sign employment contracts, containing covenants not to compete. On May 27, 1998, VetCor delivered the first draft of the employment contract to plaintiffs. The relevant portion of said contracts provided in pertinent part:

> "The Doctor acknowledges that the services to be rendered by the Doctor to the Company are of a special and unique character. The Doctor agrees that, in consideration of the Doctor's employment hereunder, the Doctor will not (i) prior to two (2) years after the date of termination of this Agreement, directly or indirectly, (w) engage, whether as principal, agent, investor, distributor, representative, stockholder, employee, consultant, volunteer or otherwise, with or without pay, in any activity or business venture, anywhere within a ten (10) mile radius of the location where the Company conducted its veterinary care practice prior to the date hereof or anywhere within the State of Rhode Island (in addition to the foregoing ten (10) mile radius) with respect to any specialty group practice, in either case which is competitive with the veterinary business of the Company or any of the other members of the Company Group..." See Block Employment Contract, p. 8 § 8.1, Defendant's Exhibit G)

By letter dated June 28, 1998, plaintiffs expressed concern to VetCor regarding the terms of their employment contract , specifically the provisions related to non competition. In said letter, plaintiffs stated that the prohibition against working in any specialty group or referral practice "anywhere within the State of Rhode Island" seemed overly strict and unreasonable. Instead, plaintiffs suggested that the referral practice prohibition should be reduced to the same ten mile restriction as the general and emergency practice prohibitions.

By letter dated July 28, 1998, VetCor agreed to modify the employment contract and changed the non compete provision so that plaintiffs would be prohibited from performing any veterinary medicine for two years and ten miles from the environs of the Warwick Animal Hospital only. In so doing, VetCor removed the statewide prohibition against working in any specialty or referral practice. Additionally, Dr. Block was offered a bonus program and equity in the business, in consideration of his position as Chief of Staff and the delivery of the contract.

By letter dated September 18, 1998, plaintiffs again expressed their displeasure in the contract revisions related to the terms of the covenant not to compete. In their letter, plaintiffs state: "After

having our lawyer look at the contract and speaking with him, he identified a number of areas which he felt would not be in our best interest to agree to at this time." Plaintiffs further aver in said letter the suggestions of their attorney, wherefore, the duration of the covenant not to compete is reduced from two (2) years to twelve (12) or eighteen (18) months and further, that the radius barring competition is reduced from ten (10) miles to seven (7) miles.[1] Additionally, plaintiffs agreed that they would accept the terms of the July 28, 1998, contract, if VetCor would increase their severance pay, in the event of termination from one month to three months.

On or about September 28, 1998, Drs. Block and Johnson signed final versions of the employment contracts. This contract contained the same restriction relating to competitions as the July, 28, 1998 version, prohibiting competition within ten miles of the hospital for two years. However, the final version did contain plaintiffs' stipulation relating to the increase of three months in the severance package..

"Animals are such agreeable friends -- they ask no question, they pass no criticisms."[2] Unlike the patients cared for by the parties to this dispute, a flurry of conflicts ensued between the plaintiffs and VetCor management personnel during the first ten months of 1999. Both parties concede that the work atmosphere became volitile, fostering a confrontational mentality that eventually boiled over through the summer of 1999 and into the autumn.

On June 24, 1999, Dr. Block sent a letter to VetCor outlining the "number of continuing and worsening problems regarding this hospital's relationship with VetCor." See Defendant's Exhibit O. The close of said letter demanded VetCor to address the problems outlined by Dr. Block under threat

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[1] It is significant to note, that in plaintiffs' petition before this Court, they request that the non competition agreement be reduced to a three to five (3-5) mile restriction for a one to two (1-2) year period.
[2] George Eliot from "Scenes of Clerical Life" (1858).

of departure by Drs. Block and Johnson from VetCor's employment. Dr. Block further threatened VetCor with direct competition when he stated in the letter:

> "Our intern and residency program will be dissolved and we will likely challenge our non-compete and set up a referral-only practice in the area to take advantage of the excellent relations we have forged with the local veterinary community over the past 2 years."

On September 16, 1999, the plaintiffs presented VetCor with a list of ramifications, including economic repercussions that would potentially occur in the event of a decision by Drs. Block and Johnson to leave the employment of VetCor. The plaintiffs also delivered a three pronged ultimatum to VetCor in September 1999, although the plaintiffs now claim that these demands did not represent an ultimatum, per se but merely a forceful means to bring about changes in the management.

The first demand requested that VetCor re-hire a previously terminated employee and to allow plaintiffs to "solely operate [Warwick Animal Hospital] without any input from VetCor." Vetcor explained to plaintiffs that they would be unable to re-hire the terminated employee due to to the seriousness of the offenses for which she was terminated and further, that VetCor would not permit two employees to operate its business without any of its input.

The second of plaintiffs' demands requested that VetCor sell Warwick Animal Hospital to plaintiffs, under terms to be later determined. Although VetCor initially entertained such a proposal and several initial offers were discussed, VetCor ultimately rejected said proposal after learning plaintiffs' offering price was far below the fair market value and industry standard.

The third demand by plaintiffs stated that if the first and second demands failed to come to fruition, plaintiffs would tender their resignations at VetCor and potentially, compete with them actively. VetCor accepted the third prong ultimatum and on October 26, 1999, VetCor terminated Drs. Block and Johnson from their employment. After said termination Drs. Johnson and Block pleaded with VetCor

to stay on during their employment transition. VetCor denied this offer and the instant controversy was filed with this Court.

Standard of Review

An action for declaratory judgment may be either affirmative of negative in form and such declaration shall have the effect of a final judgment at law. G.L. § 9-30-1. The decision to grant or to deny declaratory relief under the Uniform Declaratory Judgment Act is purely discretionary. Sullivan v. Chaffee, 703 A.2d 748 (R.I. 1997).

Analysis

The plaintiffs assert in their papers before this Court, that the covenants not to compete in their employment contracts contravene public policy in light of this state's lack of available specialists and emergency care available to the pets of Rhode Island. In support of this public policy argument, the plaintiffs have submitted eighteen (18) affidavits by area veterinarians that the Rhode Island veterinary community has suffered and shall continue to suffer undue hardship, without the unique training and skills of Drs. Block and Johnson within a five (5) mile radius to Warwick.

Although this Court appreciates plaintiffs' core argument, grounded in concern for the pets of Rhode Island, the instant controversy before this Court entails a rudimentary contractual dispute. "The interference of outsiders generally does more harm than good. It breeds confusion, and with it, delays and neglect."[3] As such, this Court will consider only the assertions immediately relevant to the contract itself, including negotiations, modifications, interpretations and alleged breaches.

The Negotiation Phase

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[3] Abraham Lincoln, Letter to William M. Cooper, July 23, 1863.

The plaintiffs contend in their twenty- nine (29) count complaint that "There was no negotiation with respect to the noncompetition provision outlined in [above Paragraph] and no opportunity for the plaintiffs to reasonably review, consult a professional, or otherwise understand the provisions contained therein." (See Plaintiff Complaint for Declaratory Judgment, § 19 at 5). Additionally, in their sworn answers to interrogatories, plaintiffs have averred that they signed the employment contracts absent the advisement of legal counsel. In plaintiffs February 29, 2000, answer to VetCor's interrogatory No. 25 (c), plaintiffs state that:

> "I did read the contract, and understood it as a lay person only. It was not until we sought counsel related to our current situation that we had any understanding as to the content of the significant portions of the contract."

To contradict plaintiffs' claims, VetCor produced three separate drafts of the employment contracts negotiated between the parties. Additionally, VetCor produced two letters sent to them by the plaintiffs, wherein the plaintiffs expressed displeasure in the terms of the employment contract and suggested modifications. One of the letters, dated September 18, 1998, expressly stated: "After having our lawyer look at the contract and speaking with him, he identified a number of areas which he felt would not be in our best interest to agree to at this time." The negotiation phase of the employment contract, which spanned approximately four months, is merely mentioned in a cursory context in plaintiffs' memoranda before this Court.

In light of these findings, this Court concludes as a matter of law that legal counsel was available to plaintiffs during the negotiations and subsequent execution of the employment contract. Even without the exhibits proffered by defendant, the span of time between the initial employment contract of four months between May 27, 1998, to the date of the actual signing on September 28, 1998, suggests to

this Court that the plaintiffs were adequately sophisticated in their dealings with VetCor and did not lack negotiation prowess. This Court further determines that in no manner did VetCor attempt to cajole plaintiffs into signing said contracts; indeed VetCor attempted to appease plaintiffs during each subsequent phase of the negotiations.

The Covenant Not To Compete

The Rhode Island Supreme Court has held that it is a fundamental principle of contract law, as well as being well settled in this state, that clear and unambiguous language set out in a contract is controlling and will govern the legal consequences of its provisions. Elias v. Youngken, 493 A.2d 158, 163 (R.I.1985). In looking to the language of the instant contract, particularly the provision relating to the covenant not to compete, this Court finds as a matter of law that the arrangement agreed to by the parties clearly and unambiguously details the restrictions to be imposed upon the plaintiffs when their employment with VetCor is terminated.

The Rhode Island Supreme Court has recognizes that although "[n]oncompetition provisions in contracts are not favored, [and] are subject to judicial scrutiny," such provisions will be enforced as written if the contract is reasonable and does not extend beyond what is apparently necessary. Durapin, Inc. v. American Products, Inc., 559 A.2d 1051, 1053 (R.I. 1989). "When considering the validity of a noncompetition agreement, the crucial issue is reasonableness, and that test is dependent upon the particular circumstances surrounding the agreement." Id. at 1053. The question of whether a restrictive covenant is reasonable, is a matter of law to be determined by the Court. Id.

The Court may enforce a restrictive covenant if it is reasonable in light of the circumstances surrounding the agreement and if said agreement does not extend beyond what is apparently necessary to protect its beneficiaries. See Iggy's Doughboys, Inc. v. Giroux, 729 A.2d 701, (R.I. 1999).

In ascertaining the reasonableness of said covenant, this Court considers the plaintiffs argument that enforcement of the non competition restrictions would impose an undue hardship upon the pet owners in Rhode Island who would allegedly be compelled to travel outside the parameters of the state to receive the skilled care previously undertaken at VetCor by the plaintiffs. Plaintiffs additionally argue that the absence of available emergency care at VetCor after their departure, poses a further risk to the safety and well-being of the pets in Rhode Island. In fact, plaintiffs aver in their memoranda to this Court: "The Rhode Island community is crying out for the services of Drs. Block and Johnson." See Plaintiff's Memoranda at 19.

As this Court is an animal lover and the proud "father" of two handsome Doberman Pinschers, it shares the plaintiffs' concern for the health and happiness of the pets of Rhode Island. However, the Court must also consider the legitimate interests of VetCor and the business stakes it wished to protect by negotiating said agreement with the plaintiffs initially. VetCor expended valuable resources to develop a referral practice in Rhode Island and has a legitimate interest in protecting the area in which said referral practice was developed.

In light of the arguments and interests at stake on behalf of the parties, and in consideration of the memoranda and extensive exhibits submitted to the Court by both parties, the Court finds as a matter of law that the two year restriction in the covenant not to compete was reasonable under the circumstances. Covenants not to compete are customary in service-orientated businesses, such as this one, where employees must build a client base and referrals provide an extensive portion of business. "A covenant not to compete should last no longer than necessary for the employees' replacements 'to have a reasonable opportunity to demonstrate their effectiveness to customers." Concord Orthopedics Professional Ass'n. v. H. James Forbes, M.D., 702 A.2d 1273, 1276 (N.H. 1997). Further, the Court

should also "consider the time necessary to 'obliterate in the minds of the public' the association between the identity of the physician with his employer's practice." Id. at 1276. Two years is a reasonable time to allow the replacement veterinarians at the hospital to demonstrate their effectiveness, and for the public and veterinary community to disassociate Drs. Block and Johnson from VetCor. See Id. Additionally, Rhode Island Courts have regularly determined that three (3) year and longer time restrictions on covenants not to compete are reasonable in the applicable circumstances. See, e.g., Griggs & Brown Co. v. Healy, 453 A.2d 761 (R.I. 1982) (where the Court enforced a three (3) year restriction); Max Garelick, Inc., v. Leonardo, 105 R.I. 142, 250 A.2d 354 (1969) (where the Court enforced a five (5) year restriction); Oakdale Manufacturing Co. v. Garst, 28 A. 973 (R.I. 1899) (where the Court enforced a five (5) year restriction); French v. Parker, 14 A. 870 (R.I. 1886) (where the Court enforced an unlimited time restriction).

Additionally, the Court finds as a matter of law that the ten (10) mile area restriction in the covenant not to compete is reasonable and does not run afoul of public policy by imposing an undue hardship on the pets of Rhode Island. Although Rhode Island measures just forty-eight (48) miles North to South and thirty-seven (37) miles East to West, Rhode Islanders have routinely traveled (albeit begrudgingly) outside the ten (10) mile ring in question to have their pets receive veterinary care. There are numerous other animal hospitals located throughout this state which are staffed by duly licensed veterinarians who provide the necessary treatment to Rhode Island's pets. Additionally, VetCor has averred that its present Chief of Staff is a board certified veterinarian and that it is presently recruiting more board certified veterinarians to replace personnel.

"In this troublesome world, we are never quite satisfied."[4] It is the opinion of this Court that the instant dispute resulted from plaintiffs' frustrations with the management style of a "large out of touch company blindly committing irrational acts because it is out of touch with the needs of the community." (See Plaintiffs Memoranda at 15). Plaintiffs negotiated this specific non competition provision for at least four (4) months with the advisement of legal counsel. The Court finds as a matter of law, that this is a reasonable restrictive covenant, entered into at arm's length, between sophisticated and educated individuals. Unfortunately, the employment arrangement was less than satisfactory for both parties, despite concessions made in good faith by both sides. The plaintiffs even commenced negotiations to buy the hospital from VetCor in order to continue to practice their craft without VetCor management. To state that the covenant not to compete is unreasonable in light of the extensive negotiations, the reasonableness of both the duration and geographical limitations, and the attempts at working out a more favorable scenario, amounts to little more than a "sour grapes" mentality by the plaintiffs to this dispute.

Clearly, the restriction does not extend beyond what is necessary to protect the interests of VetCor. Therefore for the reasons previously stated, this Court will enforce said provisions from now and continuously until October 28, 2001. Plaintiff's request for declaratory relief is hereby denied.

Counsel shall prepare and submit the appropriate order for entry.

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[4] Abraham Lincoln, Letter to Mary Todd Lincoln, April 16, 1848.